



**I****STATEMENT OF THE CASE**

On December 27, 2007, a federal grand jury in the Southern District of California returned a three-count Indictment charging Ricardo Flores (“Defendant”) with one count of being a deported alien found in the United States, in violation of 8 U.S.C. § 1326 (a) and (b), one count of unlawful possession of identification documents, in violation of 18 U.S.C. § 1028(a), and one count of fraud and misuse of an entry document, in violation of 18 U.S.C. § 1546(a). On December 28, 2007, Defendant was arraigned on the Indictment and pled not guilty. The court set a motion hearing and trial setting for January 22, 2008. On January 16, 2008, Defendant filed the above captioned motions. The United States files the following response.

**II****STATEMENT OF FACTS****A. OFFENSE CONDUCT**

On November 4, 2007, at approximately 10:21 p.m., Defendant attempted to enter the United States from Mexico through the Otay Mesa Port of Entry as a passenger in a tan, 2007 Nissan Altima with Arizona license plate number 332XBY. Defendant presented a counterfeit Permanent Resident Card, Form I-551, bearing the name “Ricardo Flores” and a counterfeit State of Arizona driver’s license bearing the name “Ricardo Flores” to a Border Patrol Agent as proof of admissibility.

In the secondary inspection area, a routine records check, using fingerprint and photograph comparison, revealed that Defendant is a citizen and national of Mexico with no right to enter or reside in the United States. Border Patrol Agents arrested Defendant.

On November 5, 2007, at approximately 3:20 a.m., Defendant was advised of his Miranda rights, and Defendant stated he understood his Miranda rights, agreed to waive those rights, and speak with agents without the presence of an attorney. Defendant admitted he was a citizen of Mexico and was born in Juarez, Chihuahua, Mexico. Defendant admitted he did not have any documents to enter or reside in the United States. Defendant admitted he presented a counterfeit Permanent Resident Card and a counterfeit Arizona driver’s license to Border Patrol Agents in order to enter the United States. Defendant unlawfully acquired the Permanent Resident Card for \$50.00 and the Arizona driver’s license

1 for \$30.00 in Tijuana, Mexico. Defendant admitted he had been previously deported by an immigration  
2 judge, and he had a prior felony conviction in Texas.

3 **B. DEFENDANT'S IMMIGRATION HISTORY**

4 Defendant is a citizen and national of Mexico. On October 28, 1997, Defendant was ordered  
5 excluded, deported, and removed from the United States to Mexico pursuant to an order issued by an  
6 immigration judge. On November 1, 2006, Defendant was ordered excluded, deported, and removed  
7 from the United States to Mexico pursuant to an order issued by an immigration judge. After the last  
8 time Defendant was lawfully ordered excluded, deported, and removed from the United States, there  
9 is no evidence in the reports and records maintained by the Department of Homeland Security that  
10 Defendant applied to the U.S. Attorney General or the Secretary of the Department of Homeland  
11 Security to lawfully return to the United States.

12 **C. DEFENDANT'S CRIMINAL HISTORY**

13 Defendant has a criminal history, and the United States, propounds that Defendant has eight  
14 criminal history points placing him in Criminal History Category IV. On April 19, 1996, Defendant was  
15 convicted of felony aggravated assault with a deadly weapon, to wit, a firearm, in violation of Texas  
16 Penal Code § 22.02(a)(2), and received a sentence of 6 years in prison. On October 26, 2006, Defendant  
17 was convicted of felony possession of a forged document, in violation of Arizona law, and received a  
18 sentence of 89 days in jail and 3 years probation.

19 **III**

20 **UNITED STATES' MOTIONS**

21 **A. MOTION FOR FINGERPRINT EXEMPLARS**

22 The United States requests that the Court order that Defendant make himself available for  
23 fingerprinting by the United States' fingerprint expert. See United States v. Ortiz-Hernandez, 427 F.3d  
24 567, 576-77 (9th Cir. 2005) (Government may have defendant fingerprinted and use criminal and  
25 immigration records in Section 1326 prosecution). Identifying physical characteristics, including  
26 fingerprints, are not testimonial in nature and the collection and use of such evidence would not violate  
27 Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394,  
28 397 (9th Cir. 1969). See also Schmerber v. California, 384 U.S. 757, 761 (1966) (withdrawal of blood  
is not testimonial).

1           **B.       MOTION FOR RECIPROCAL DISCOVERY**

2           The United States hereby requests Defendant deliver all material to which the United States may  
3 be entitled under Fed. R. Crim. P. 16(b) and 26.2.

4                   **1.       Defendant's Disclosures Under Fed R. Crim. P. 16(b)**

5           On January 16, 2008, Defendant invoked Fed. R. Crim. P. 16(a) in his discovery motion and the  
6 United States has voluntarily complied and will continue to comply with the requirements of Fed. R.  
7 Crim. P. 16(a). Therefore, Fed. R. Crim. P. 16(b), requiring that reciprocal discovery be provided to  
8 the United States, is applicable.

9           The United States hereby requests Defendant permit the United States to inspect, copy, and  
10 photograph any and all books, papers, documents, photographs, tangible objects, or make copies of  
11 portions thereof, which are within the possession, custody or control of Defendant and which Defendant  
12 intends to introduce as evidence in his case-in-chief at trial.

13           The United States further requests that it be permitted to inspect and copy or photograph any  
14 results or reports of physical or mental examinations and of scientific tests or experiments made in  
15 connection with this case, which are in the possession or control of Defendant, which he intends to  
16 introduce as evidence-in-chief at the trial, or which was prepared by a witness whom Defendant intends  
17 to call as a witness. Because the United States will comply with Defendant's request for delivery of  
18 reports of examinations, the United States is entitled to the items listed above under Fed. R. Crim. P.  
19 16(b)(1). The United States also requests that the Court make such order as it deems necessary under  
20 Fed. R. Crim. P. 16(d)(1) and (2) to ensure that the United States receives the discovery to which it  
21 is entitled.

22                   **2.       Witness Statements Under Fed. R. Crim. P. 26.2**

23           Fed. R. Crim. P. 26.2 requires the production of prior statements of all witnesses, except a  
24 statement made by Defendant. Fed. R. Crim. P. 26.2 requires reciprocal production of statements, in  
25 accordance with the Jencks Act.

26           The timeframe established by Fed. R. Crim. P. 26.2 requires the statement to be provided after  
27 the witness has testified. In order to expedite trial proceedings, the United States hereby requests  
28 Defendant be ordered to supply all prior statements of defense witnesses by a reasonable date before

1 trial to be set by the Court. Such an order should include any form in which these statements are  
2 memorialized, including but not limited to, tape recordings, handwritten or typed notes and/or reports.

3 **C. MOTION FOR LEAVE TO FILE FURTHER MOTIONS**

4 Should new information or legal issues arise, the United States respectfully requests the  
5 opportunity to file such further motions as may be appropriate.

6 **IV**

7 **CONCLUSION**

8 For the foregoing reasons, the United States requests the Court grant the United States'  
9 Motions for Fingerprint Exemplars, Reciprocal Discovery and Leave to File Further Motions.

10 DATED: January 16, 2008

11 Respectfully submitted,

12 KAREN P. HEWITT  
13 United States Attorney

14 /s/ Joseph J.M. Orabona  
15 JOSEPH J.M. ORABONA  
16 Assistant United States Attorney  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ) Criminal Case No. 07CR3471-JAH  
 )  
Plaintiff, )  
 ) **CERTIFICATE OF SERVICE**  
v. )  
 )  
RICARDO FLORES, )  
 )  
Defendant. )  
\_\_\_\_\_ )

IT IS HEREBY CERTIFIED that:

I, Joseph J.M. Orabona, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **THE UNITED STATES' NOTICE OF MOTIONS AND MOTIONS FOR FINGERPRINT EXEMPLARS, RECIPROCAL DISCOVERY AND LEAVE TO FILE FURTHER MOTIONS** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Zandra Lopez, Esq.  
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*Lead Attorney for Defendant*

A hard copy is being sent to chambers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 16, 2008.

/s/ Joseph J.M. Orabona  
JOSEPH J.M. ORABONA  
Assistant United States Attorney